

SERVICE DATE – AUGUST 29, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-1000 (Sub-No. 1X)

GEORGIA SOUTHWESTERN RAILROAD, INC.—ABANDONMENT AND
DISCONTINUANCE EXEMPTION—IN HARRIS AND MERIWETHER COUNTIES, GA

Decided: August 28, 2008

By decision served on December 10, 2007, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Georgia Southwestern Railroad, Inc. (GSWR) of 43 miles of rail line extending between milepost R-12.0 at Florida Rock and milepost R-55.0 at Allie, in Harris and Meriwether Counties, GA (the line), subject to trail use, public use,¹ environmental, and standard employee protective conditions. The exemption was scheduled to become effective on January 9, 2008, unless stayed by the Board or unless an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27 was filed on or before December 20, 2007.

On December 20, 2007, Kern Valley Railroad Company (KVRC) timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the line. In a decision served on December 21, 2007 (December 21 Decision), KVRC was found financially responsible and the effective date of the exemption authorizing the abandonment was postponed to permit the OFA process to proceed. The December 21 Decision stated that either party could request the Board to establish terms and conditions for the sale if no agreement was reached on or before January 22, 2008. The December 21 Decision further stated that, if no agreement is reached and no request for the Board to establish terms and conditions was submitted by that date, the Board would serve a decision vacating the December 21 Decision and allowing the abandonment exemption to become effective.

By decision served on February 15, 2008, the Board vacated the December 21 Decision to the extent it postponed the effective date of the abandonment exemption to permit the OFA process to proceed. The February 15 Decision indicated that KVRC had not filed a request to set terms and conditions. The Board terminated the OFA process and made the abandonment exemption effective on the service date of the February 15 Decision, subject to any previously imposed conditions. Also, the February 15 Decision stated that the previously imposed public use and trail use conditions would extend until August 13, 2008. The public use condition, which is limited by statute to 180 days, expired on August 13, 2008, and may not be extended.

¹ A request for imposition of a public use condition and for issuance of a notice of interim trail use (NITU) was filed by Harris County, GA (the County), a local government entity of the State of Georgia.

On August 13, 2008, the County filed a request for an extension of the NITU negotiating period for 180 days until February 9, 2009, for the portion of the line between milepost R-12.0 and milepost R-33.5. The County states that it continues to negotiate with GSWR. GSWR, in a letter filed on August 14, 2008, consents to the extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended.² Under the circumstances, extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended to February 9, 2009.

By request filed on August 18, 2008, TYO, Inc. (TYO) sought issuance of a NITU, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), for the 21.5-mile portion of the right-of-way that extends from milepost R-33.5, at the Harris County-Meriwether County line, and milepost R-55.0, at Allie. TYO submitted a statement indicating its willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. GSWR, in a letter filed on August 21, 2008, states that it is willing to negotiate with TYO for interim trail use.

A trail use request may be accepted as long as the Board retains jurisdiction over the involved railroad right-of-way³ and the carrier is willing to enter into negotiations. Inasmuch as GSWR has not consummated the abandonment and is willing to negotiate with TYO for trail use over the requested portion of the right-of-way, a NITU will be issued for that portion of the right-of-way from milepost R-33.5, at the Harris County-Meriwether County line, and milepost R-55.0, at Allie, with the trail use negotiating period extending until February 9, 2009. If no agreement is reached within that time period, GSWR may fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

² See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

³ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company—Exemption—Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri—Kansas—Texas Railroad Company—Abandonment—In Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the decision served on December 10, 2007, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below until February 9, 2009, to permit TYO to negotiate with GSWR for trail use of the 21.5-mile portion of the right-of-way that extends from milepost R-33.5, at the Harris County-Meriwether County line, and milepost R-55.0, at Allie.
3. The County's request to extend the NITU negotiating period for the 21.5-mile portion of the line that extends from milepost R-12.0, at Florida Rock, to milepost R-33.5, at the Harris County-Meriwether County line, is granted.
4. The negotiating period under the NITU for the 21.5-mile portion of the line that extends from milepost R-12.0, at Florida Rock, to milepost R-33.5, at the Harris County-Meriwether County line, is extended until February 9, 2009.
5. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
6. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
7. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
8. If an agreement for interim trail use/rail banking is reached by February 9, 2009, interim trail use may be implemented. If no agreement is reached by that time, GSWR may fully abandon the line, subject to the conditions imposed in the December 10, 2007 decision. See 49 CFR 1152.29(d)(1).

9. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary